To: Mathieus, George[gemathieus@mt.gov]
Cc: Urban, Eric[EUrban@mt.gov]
From: Laidlaw, Tina
Sent: Wed 10/23/2013 4:17:27 PM
Subject: RE: Downstream Beneficial Use Language

Will do!

From: Mathieus, George [mailto:gemathieus@mt.gov]
Sent: Tuesday, October 22, 2013 4:58 PM
To: Laidlaw, Tina
Cc: Urban, Eric
Subject: RE: Downstream Beneficial Use Language

Mike is gone for 2 weeks, work with Eric….

From: Laidlaw, Tina [mailto:Laidlaw.Tina@epa.gov]
Sent: Tuesday, October 22, 2013 4:20 PM
To: McInnis, Amanda; Craig Woolard; Mumford, David
Cc: Suplee, Mike; Mathieus, George
Subject: RE: Downstream Beneficial Use Language

Hey Guys,

Sorry to miss the League of Cities and Towns meeting and our opportunity to discuss the downstream use issue. Amanda, thanks for forwarding the Wisconsin language. I was hoping we could figure out a time for a conference call and/or meeting to discuss this topic. Mike is out until Nov. 4th or so but hopefully George can join us.

Any chance you guys are available next Thursday or Friday for a conference call? If so, I can set up a call-in line.

I was hoping we could start the conversation by reviewing the current rule language where the downstream use protection is mentioned. Then we can make sure we all understand when this

concept applies and how it would be applied. That way, we can hopefully all be on the same page with our understanding and figure out where/ if any language is needed to address your concerns.

Look forward to talking.

Tina

Rule Language on Downstream Use Protection:

DEQ Circular-12:

Page 5:

(2) Within and among the geographic regions or watersheds listed, base numeric nutrient standards of the downstream reaches or other downstream waterbodies must continue to be maintained.

EPA suggested the following edits: "Within and among the geographic regions or watersheds listed, base numeric nutrient standards of the downstream reaches and lakes will continue to be maintained by limiting nutrient loadings as necessary from the contributing upstream waterbodies. Where possible, modeling and/or other methods such as regression between upstream and downstream nutrient concentrations will be utilized to determine the limitations required to provide for the attainment and maintenance of water quality standards of downstream waters."

Page 15:

2.2 Option for Remaining at a Previous General Variance Long-term Average Based on Water Quality Modeling

The demonstration must consider effects on the downstream waterbody including effects from the non-target nutrient; if the downstream waterbody will be impacted, some level of reduction on the target and/or non-target nutrient will likely be required or the individual variance will not

be granted.

DEQ standards 7.7:

Page 3: The potential impacts to the downstream waterbody, including impacts from the non-target nutrient, must be given consideration in all cases where New Rule I (3) is invoked. As described in section 2.2 of DEQ-12 Part B, if a downstream waterbody will be impacted, some level of reduction on the target and/or non-target nutrient will likely be required, or the individual variance may not be granted.

From: McInnis, Amanda [mailto:Amanda.McInnis@hdrinc.com]
Sent: Wednesday, October 16, 2013 10:10 AM
To: Craig Woolard; Laidlaw, Tina; Mumford, David
Cc: Suplee, Mike
Subject: Downstream Beneficial Use Language

Craig, Tina and Dave—

We had discussed at our last meeting about our reaction to the downstream beneficial use language that EPA inserted into MDEQ12. It holds point sources responsible for non-points source generated nutrients. You had asked me to send that language along. The language I read at the meeting from Chapter NR217, the State of Wisconsin's nutrient package was:

"the permittee can demonstrate that the applicable phosphorus criterion cannot be met in the watershed without the control of phosphorus from nonpoint sources"

The context of this language is a little different in the Wisconsin rules. This is the pathway for a point source to get an adaptive management "alternative effluent limit," but I think it reflects what we are trying to say. If we can show that the criterion cannot be met without non-point control, then the point source should not be held liable for that situation.

We have also had many discussions about developing a reasonable definition of downstream. Dave Mumford proposed the idea that perhaps downstream could be defined as when the nutrient concentrations are the same as upstream of a utility's outfall. That's one idea.

Amanda

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